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Attorneys for Plaintiff Thomas

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CASSANDRA ANN THOMAS, an individual;

Case No.: 2:16-cv-80-JAD-CWH

Plaintiffs,

**PLAINTIFF'S MOTION TO
EXTEND TIME FOR SERVICE ON
DEFENDANTS COX, HOLMES
AND KAYBATAY**

(FIRST REQUEST)

JAMES G. COX, et al.;

(FIRST REQUEST)

Defendants.

Pursuant to FRCP 4(m), plaintiff, Cassandra Thomas, through her attorneys of the law firm GALLIAN WELKER & BECKSTROM, LC, hereby submits her Motion to Extend Time for Service of the 1st Amended Complaint on Defendants Cox, Holmes and Kaybatay. This Motion is based upon the papers and pleadings on file herein, the Declaration of Travis N. Barrick below, and such oral argument that the Court chooses to entertain at the hearing thereon, if any.

I. BACKGROUND FACTS.

Ms. Thomas is currently incarcerated at the NDOC Florence McClure Women's Correctional Center ("FMWCC").

On May 23, 2016, Ms. Thomas filed her *pro se* 1st Amended Complaint (ECF

1 No. 11). Thereafter, she attempted service on certain defendants by way of US Mail.

2 On November 28, 2016, Mr. Barrick filed his Notice of Appearance (ECF No.
3 26).

4 On December 5, 2016, the Court issued its Notice of Intent to Dismiss (ECF
5 No. 28), giving Ms. Thomas until January 4, 2017 to accomplish service or the case
6 would be dismissed.
7

8 On December 5, 2016, Mr. Barrick prepared and filed proposed summons to
9 be issued (ECF No. 29), which were subsequently issued by the Clerk (ECF No. 30).
10 Thereafter, Mr. Barrick delivered the Summons to Legal Wings to be served on the
11 various Defendants, at both the NDOC and the Attorney General's Office in Carson
12 City.
13

14 On December 20, 2016, Legal Wings accomplished service on Defendants
15 Aranas, Clark, Cox, Faulkner, Gentry, Holmes and Kaybatay at the Attorney
16 General's Office **and** Aranas, Clark, Faulkner and Gentry at the offices of the
17 NDOC, which refused service of process on Cox, Holmes and Kaybatay.
18

19 On January 5, 2017, Legal Wings delivered to Mr. Barrick the Affidavits of
20 service on those Defendants, which were filed the same day (ECF No. 32).

21 Legal Wings also delivered Affidavits of Attempted Service on Cox, Holmes
22 and Kaybatay. The purpose of this Motion is to extend the time to accomplish
23 service on Cox, Holmes and Kaybatay, the Defendants for whom NDOC refused to
24 accept service.
25

26 II. ARGUMENT.

27 FRCP 4(m) provides that "if the plaintiff shows good cause for the failure [to
28 accomplish service in a timely fashion], the Court must extend the time for service

1 for an appropriate period."

2 Here, Ms. Thomas has shown good cause because the NDOC refused to
3 accept service for former NDOC employees Cox, Holmes and Kaybatay, as they are
4 entitled to do.

5 However, in the event that Mr. Barrick and counsel at the Attorney
6 General's Office are unable to agree to waivers of service, then Ms. Thomas must
7 take reasonable steps to locate those individuals to accomplish personal service.

8 For this reason, Ms. Thomas requests an additional 60 days to accomplish
9 service on Defendants Cox, Holmes and Kaybatay.

10 DATED this 5th day of January, 2017.

11
12 By: 
13 _____
14 Travis N. Barrick, SBN 9257
15 GALLIAN WELKER
16 & BECKSTROM, LC
17 Attorneys for Cassandra Thomas

18 **DECLARATION OF TRAVIS N. BARRICK**

19 **Thomas v. Cox, 2:16-cv-80-JAD-CWH**

20 STATE OF NEVADA)
21 COUNTY OF CLARK) ss:
22)

23 I, Travis N. Barrick, having been first duly sworn on oath, states as follows
under penalty of perjury:

- 24 1. I am a resident of Clark County, Nevada, over the age of 18 years old and
25 am counsel of record for the Plaintiff in this matter.
- 26 2. On December 5, 2016, I prepared and filed proposed summons to be issued
27 (ECF No. 29), which were subsequently issued by the Clerk (ECF No. 30).

1 Thereafter, I delivered the Summons to Legal Wings to be served on the various
2 Defendants, at both the NDOC and the Attorney General's Office in Carson City.

3. On January 5, 2017, Legal Wings delivered to my office the Affidavits of
4 service on some of the Defendants, which were filed the same day (ECF No. 32).

5. On January 5, 2017, Legal Wings also delivered to my office Affidavits of
6 Attempted Service on Defendants Cox, Holmes and Kaybatay at the NDOC. Those
7 Affidavits¹ stated that the NDOC would not accept service on Cox and Holmes
8 because they were no longer employed by the NDOC and because Dulce Kaybatay
9 has never been employed by the NDOC.

10
11 5. Further, Declarant sayeth not.
12

13 DATED this 5th day of January, 2017



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s/ Travis N. Barrick
Travis N. Barrick

ORDER

18 For good cause appearing, it is hereby ordered that the time for Plaintiff to
19 accomplish service on Defendants Cox, Holmes and Kaybatay is hereby extended until
20 March 4, 2017 _____.

21
22 Dated this 6 th day of January, 2017.



23
24 DISTRICT COURT MAGISTRATE
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1 True and correct copies of those Affidavits are attached as Exhibit 1.

1
Certificate of Service by CM/ECF

2 I hereby certify that on the 5th day of January, 201, I served the above and
3 foregoing Motion to Extend the time for Service, by filing in the CM/ECF system
4 and by US Mail, postage prepaid, upon the following:

5 Adam Laxalt
6 Attorney General
7 Bureau of Litigation, Public Safety Division
8 555 E. Washington Avenue, St. 3900
9 Las Vegas, NV 89101
Attorney for Defendants

10 
11 By: /s/ Travis N. Barrick
12 An employee of Gallian Welker &
13 Beckstrom, LC

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Thomas v. Cox, 2:16-cv-80-JAD-CWH
Exhibit 1
Affidavits of Attempted Service

1 Cassandra Thomas
2 FMWCC 4370 Smiley Rd
3 Las Vegas, NV 89115
1021020
3 Prison Number

4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

6 Cassandra Thomas) CASE NO. 2:16-cv-00080-JAD-CWH
7)
8 Plaintiff,)
9 vs.)
10 James G. Cox – Director NDOC; et al.,)
11 Defendants.)
12

13 AFFIDAVIT OF ATTEMPTED SERVICE RE: JAMES G. COX, DIRECTOR NDOC

14 State of Nevada)
15 County of Carson City) ss.

16 Norma Holland Dunham, first being duly sworn deposes and says:

17 1. That affiant is and was at all times mentioned herein a citizen of the United States,
18 over 18 years of age, not a party to, nor interested in the within action, and licensed to serve civil
process under Nevada license number 389.

19 2. That affiant received the within Summons in a Civil Action; First Amended
20 Complaint, Civil Rights Complaint Pursuant to 42 U.S.C. 1983, Jury Demand Trial on December
21 19, 2016.

22 3. That affiant attempted to personally serve a copy of said documents on the
23 Defendant, James G. Cox, Director NDOC, at 5500 Snyder Ave., Bldg. 17, Carson City, Nevada
24 89701, on December 20, 2016 at 10:45 a.m. and spoke with Janet Schull, Human Resources Analyst,
who stated that the Defendant is no longer employed there and they cannot accept service.

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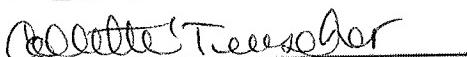
1 4. That affiant on the basis of the foregoing information was unable to personally serve
2 the Defendant, James G. Cox, Director NDOC, in Carson City, Nevada.

3 Further your affiant saith naught.
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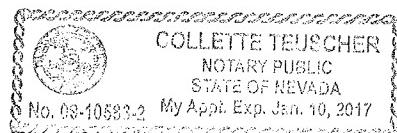
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9 Norma Holland-Dunham
10 Registered Work Card #R-061612
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12

13 Subscribed and Sworn to Before me
14 this 29 day of December, 2016.
15

16 
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18 Notary Public in and for said
19 County and State
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LEGAL WINGS, INC.
PROCESS LICENSE #389
LAS VEGAS, NV
(702)384-0305

1 Cassandra Thomas
2 FMWCC 4370 Smiley Rd
3 Las Vegas, NV 89115
4 1021020
5 Prison Number

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Cassandra Thomas) CASE NO. 2:16-cv-00080-JAD-CWH
vs.)
Plaintiff,)
James G. Cox – Director NDOC; et al.,)
Defendants.)

AFFIDAVIT OF ATTEMPTED SERVICE RE: JAMES HOLMES, D.O.

State of Nevada)
County of Carson City) ss.
)

Norma Holland Dunham, first being duly sworn deposes and says:

1. That affiant is and was at all times mentioned herein a citizen of the United States,
over 18 years of age, not a party to, nor interested in the within action, and licensed to serve civil
process under Nevada license number 389.

2. That affiant received the within Summons in a Civil Action; First Amended
Complaint, Civil Rights Complaint Pursuant to 42 U.S.C. 1983, Jury Demand Trial on December
19, 2016.

3. That affiant attempted to personally serve a copy of said documents on the
Defendant, James Holmes, D.O., by serving the Nevada Department of Corrections, at 5500 Snyder
Ave., Bldg. 17, Carson City, Nevada 89701, on December 20, 2016 at 10:45 a.m. and spoke with
Janet Schull, Human Resources Analyst, who stated that the Defendant is no longer employed there
and they cannot accept service.

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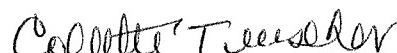
1 4. That affiant on the basis of the foregoing information was unable to personally serve
2 the Defendant, James Holmes, D.O., in Carson City, Nevada.

3 Further your affiant saith naught.
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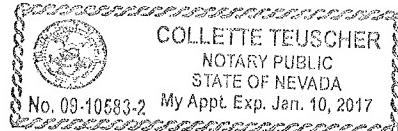
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9 Norma Holland-Dunham
10 Registered Work Card #R-061612

11 Subscribed and Sworn to Before me
12 this 29 day of December, 2016.

13 
14 Collette Teuscher

15 Notary Public in and for said
16 County and State



18 LEGAL WINGS, INC.
19 PROCESS LICENSE #389
20 LAS VEGAS, NV
21 (702)384-0305

Cassandra Thomas
FMWCC 4370 Smiley Rd
Las Vegas, NV 89115
1021020
Prison Number

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AFFIDAVIT OF ATTEMPTED SERVICE RE: DULCE KAYBATAY, N.P.

Norma Holland Dunham, first being duly sworn deposes and says:

1. That affiant is and was at all times mentioned herein a citizen of the United States, over 18 years of age, not a party to, nor interested in the within action, and licensed to serve civil process under Nevada license number 389.

19 2. That affiant received the within Summons in a Civil Action; First Amended
20 Complaint, Civil Rights Complaint Pursuant to 42 U.S.C. 1983, Jury Demand Trial on December
21 19, 2016.

22 3. That affiant attempted to personally serve a copy of said documents on the
23 Defendant, Dulce Kaybatay, N.P., by serving the Nevada Department of Corrections, at 5500
24 Snyder Ave., Bldg. 17, Carson City, Nevada 89701, on December 20, 2016 at 10:45 a.m. and spoke
25 with Janet Schull, Human Resources Analyst, who stated that the Defendant has never been
employed there and they cannot accept service.

A grid of 15 asterisks arranged in five rows of three. The asterisks are black and have a slightly irregular shape.

1 4. That affiant on the basis of the foregoing information was unable to personally serve
2 the Defendant, Dulce Kaybatay, N.P., in Carson City, Nevada.

3 Further your affiant saith naught.
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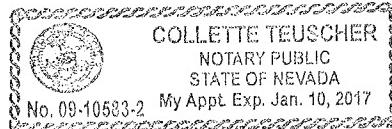
7 Norma Holland-Dunham

8 Norma Holland-Dunham
9 Registered Work Card #R-061612
10

11 Subscribed and Sworn to Before me
12 this 29 day of December, 2016.

13 Collette Teuscher

14 Notary Public in and for said
15 County and State
16



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